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ABSTRACT

This seventh chapter of "The Yearbook of School Law, 1986" summarizes and analyzes state and federal court decisions handed down in 1985 related to the financing of elementary and secondary education. The major topics examined are the use of public funds for private schools, the sources and allocation of public school funds, and school tax issues. Particular attention is paid to United States Supreme Court decisions dealing with the use of public funds for students in nonpublic schools, state court litigation contesting the constitutionality of state school finance programs in New Jersey and Connecticut, and cases involving the legality of reductions in state aid. (PGD)

FINANCE

Richard A. Rossmiller

INTRODUCTION

The United States Supreme Court decided cases dealing with the use of public funds to provide programs for students in nonpublic schools as well as the recovery of title I funds improperly spent by a state. Additional litigation contesting the constitutionality of state school finance programs in New Jersey and Connecticut occurred and other cases which were decided involved the legality of reductions in state aid as a result of executive orders or administrative decisions. Several cases involving the funding of special programs for handicapped students were decided and there was continuing litigation on school taxing and spending issues.

PUBLIC FUNDS FOR PRIVATE SCHOOLS

The United States Supreme Court decided cases involving school districts in Michigan and New York whose programs were alleged to violate the first amendment. In the Michigan case, taxpayers claimed that the district's shared time and community education programs

violated the establishment clause.[1] A federal district court had ruled the programs unconstitutional and enjoined their further operation.[2] The Court of Appeals for the Sixth Circuit affirmed.[3] Both programs provided instruction at public expense to nonpublic school students in classrooms located in and leased from the local nonpublic schools by the School District of Grand Rapids.

The shared time program offered "supplementary" classes during the regular school day in subjects such as remedial and enrichment mathematics, remedial and enrichment reading, art, music, and physical education. Teachers in the shared time program were full-time employees of the public school district although some previously had taught in nonpublic schools. The community eduction program offered classes for both children and adults. These classes were taught in nonpublic schools (as well as public schools and other sites) after the close of the regular school day. Teachers in this program were part-time employees of the Grand Rapids school district and many of them were employed as teachers in the nonpublic schools in which the community education courses were offered. Although the programs were administered by a public school employee, nonpublic school administrators decided which courses they wished to offer at their school and which classrooms would be used for the program. The public school district leased the classrooms at the rate of $6 per classroom per week. Rooms used in the program were free of religious symbols or artifacts and a sign identifying it as a "public school classroom" was posted during the time the room was used for the programs. The record showed that although the shared time program was open to all students, only nonpublic school students were enrolled in the classes offered in nonpublic school buildings.

The court referred to several of its previous decisions interpreting the establishment clause of the first amendment and commented that:

> In all of these cases, our goal has been to give meaning to the sparse language and broad purposes of the [c]lause, while not unduly infringing on the ability of the [s]tates to provide for the welfare of their people in accordance with their own particular circumstances. Providing for the education of schoolchildren is surely a praiseworthy purpose.

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1. Grand Rapids School Dist. v. Ball, 103 S. Ct. 3216 (1983).
2. Americans United for Separation of Church and State v. School Dist. of Grand Rapids, 546 F. Supp. 1071 (W.D. Mich. 1982); *see* The Yearbook of School Law 1983 at 188, and The Yearbook of School Law 1984 at 158.
3. Americans United for Separation of Church and State v. School Dist. of Grand Rapids, 718 F.2d 1389 (6th Cir. 1983); *see* The Yearbook of School Law 1985 at 227.

> But our cases have consistently recognized that even such a praiseworthy, secular purpose cannot validate government aid to parochial schools when the aid has the effect of promoting a single religion or religion generally or when the aid unduly entangles the government in religious matters. For just as religion throughout history has provided spiritual comfort, guidance, and inspiration to many, it can also serve powerfully to divide societies and to exclude those whose beliefs are not in accord with particular religions or sects that have from time to time achieved dominance. The solution to this problem adopted by the Framers and consistently recognized by this Court is jealously to guard the right of every individual to worship according to the dictates of conscience while requiring the government to maintain a course of neutrality among religions, and between religion and nonreligion.[4]

The Court applied the three-part test first employed in *Lemon v. Kurtzman*,[5] namely, the purpose of the program must be secular in nature, its principle effect must be one that neither advances nor inhibits religion, and it must not unduly entangle the government in religious affairs. The Court agreed with the lower courts that the purpose of the two programs was clearly secular in nature. The Court also agreed that the programs were unconstitutional because they had the effect of promoting religion.[6] The Court stated:

> We conclude that the challenged programs have the effect of promoting religion in three ways. The state-paid instructors, influenced by the pervasively sectarian nature of the religious schools in which they work, may subtly or overtly indoctrinate the students in particular religious tenets at public expense. The symbolic union of church and state inherent in the provision of secular, state-provided instruction in religious school buildings threatens to convey a message of state support for religion to students and to the general public. Finally, the programs in effect subsidize the religious functions of the parochial schools by taking over a substantial portion of their responsibility for teaching secular subjects. For these reasons, the conclusion is inescapable that the Community Education and Shared

4. Grand Rapids School Dist. v. Ball, 103 S. Ct. 3216, 3222 (1985).
5. 403 U.S. 601 (1971).
6. 103 S. Ct. at 3222.

> Time progr[illegible] the "primary or principle" effect of advancing r[illegible]nd therefore violate the dictates of the [e]stabli[illegible]e of the [f]irst [a]mendment.[7]

In the New York ca[illegible] payers challenged New York City's use of federal funds to financ[illegible]ogram in which public school teachers and other professional em[illegible]yees provided remedial instruction and clinical and guidance services in parochial schools.[8] The programs were funded under title I of the Elementary and Secondary Education Act of 1965 which provided financial assistance to local school districts to meet the needs of educationally disadvantaged children from low income families. The programs were conducted by teachers, guidance counselors, psychologists, psychiatrists, and social workers employed by the New York City school district who volunteered to teach in the parochial schools. The programs were supervised by public school administrators who made unannounced supervisory visits to monitor the classes. Teachers and other professionals involved in the program were directed to avoid involvement with religious activities, bar religious materials from their classrooms, and minimize their contact with private school personnel. Taxpayers brought suit in 1978 alleging that the program violated the establishment clause of the first amendment but the district court did not agree. However, upon appeal the Court of Appeals for the Second Circuit held that the programs in question violated the establishment clause.[9]

Although school officials claimed that unlike Grand Rapids, New York City had adopted a system for monitoring the religious content of the title I classes conducted in the religious schools, the Court found that the supervisory system inevitably resulted in excessive entanglement of church and state. The Court noted that the programs were provided in a pervasively sectarian environment and that ongoing inspection was required to insure the absence of a religious message in the programs. The Court commented:

> This pervasive monitoring by public authorities in the sectarian schools infringes precisely those [e]stablishment [c]lause values at the root of the prohibition of excessive entanglement. Agents of the [s]tate must visit and inspect the religious school regularly, alert for the subtle or overt presence of religious matter in the [t]itle I class . . . . In

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7. *Id.* at 3230.
8. Aguilar v. Felton, 105 S. Ct. 3232 (1985).
9. Felton v. Secretary, United States Dep't of Educ., 739 F.2d 48 (2d Cir. 1984); *see* The Yearbook of School Law 1985 at 228.

> addition, the religious school must obey these same agents when they make determinations as to what is and what is not a "religious symbol" and thus off limits in a [t]itle I classroom. In short, the religious school, which has as a primary purpose the advancement and preservation of a particular religion must endure the ongoing presence of state personnel whose primary purpose is to monitor teachers and students in an attempt to guard against the infiltration of religious thought.
>
> The administrative cooperation that is required to maintain the educational program at issue here entangles [c]hurch and [s]tate in still another way that infringes interests at the heart of the [e]stablishment [c]lause. Administrative personnel of the public and parochial school systems must work together in resolving matters related to schedules, classroom assignments, problems that arise in the implementation of the program, requests for additional services, and the dissemination of information regarding the program.[10]

The Court concluded that "despite the well-intentioned efforts taken by the City of New York, the program remains constitutionally flawed owing to the nature of the aid, to the institution receiving the aid, and to the constitutional principles they implicate."[11]

In Missouri, the provisions of the Elementary and Secondary Education Act which authorized payment of funds to an independent contractor for providing remedial services for educationally deprived children attending nonpublic schools were challenged.[12] The plaintiff questioned the secretary of education's decision to invoke the "bypass provision" of title I and to authorize payment of federal funds to an independent contractor who provided services in parochial schools. It was argued that this practice violated the establishment clause because the independent contractor was alleged to be a religiously affiliated and controlled organization. The Court rejected the argument that the bypass provision of title I was unconstitutional on its face, noting that the Supreme Court has held constitutional off-premise remedial instruction for students attending nonpublic schools. The court also ruled that the secretary of education acted rationally and within the scope of his authority in invoking the bypass provision for Missouri. However, the court ruled that the program, as administered

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10. 105 S. Ct. at 3238.
11. *Id.* at 3239.
12. Wamble v. Bell, 598 F. Supp. 1356 (W.D. Mo. 1984).

on the premises of parochial schools in Missouri during the school day, was unconstitutional because it violated the requirement that the government be neutral with regard to religion, while the constant on-premise monitoring or surveillance would result in excessive entanglement of the government with religion.

Transportation

The Supreme Court of Ohio decided a case involving bus transportation for children attending a nonpublic school.[13] A group of parents petitioned their local school board to provide bus transportation for their children who attended a nonpublic high school. The school board, after conducting an investigation, denied the request on the basis that it would be unreasonable and impractical. Ohio statutes specified the procedure to be used in such cases, which included mediation, a hearing before a referee, and review by the State Board of Education. The state board eventually upheld the local board's decision and the plaintiffs turned to the courts. The court noted the standard for its review required that its judgment not be substituted for that of the State Board of Education if there was any evidence to support the board's decision. However, the court could find no credible evidence to support the cost figures submitted by the local school board and accepted by the state board. The court found that the local school board had failed to substantiate its cost figures and that the cost figures which the state board had relied upon were distorted. The lower court's judgment was reversed and the case was remanded for the further proceedings.

An action was brought challenging the constitutionality of the system used in Maryland to transport nonpublic school children.[14] Maryland had not enacted a state law governing the provision of transportation at public expense for private school students. However, eleven of the state's twenty-four counties had enacted local laws authorizing provision of transportation to nonpublic school students at county expense. The thirteen counties which had not previously authorized the use of public funds to provide transportation to private school students are now without power to enact such legislation because the Maryland Court of Appeals has ruled that the field of education has been preempted by the General Assembly. The plaintiffs contended that their first amendment rights were infringed because the

13. Pushay v. Walter, 481 N.E.2d 575 (Ohio 1985).
14. McCarthy v. Hornbeck, 590 F. Supp. 936 (D. Md. 1984).

state (or its counties) do not pay for transporting their children to church-related schools and thus have interfered with their right to freely exercise their religion. The court concluded that Maryland's transportation system for nonpublic school children at most placed an indirect economic burden on the plaintiffs' right to freely exercise their religion and ruled that the school transportation system did not infringe the plaintiffs' free exercise rights.

The plaintiffs also claimed that the Maryland school transportation system violated the equal protection clause of the fourteenth amendment because it discriminated between public and nonpublic school students, and between nonpublic school students in particular counties. Applying the rational basis test, the court determined that Maryland's system of school transportation was constitutional because it was rationally related to the state's goal of conserving limited financial resources.

SOURCES AND ALLOCATION OF FUNDS

State School Finance Programs

Further action occurred in a New Jersey case in which the plaintiffs, who are children attending public schools in the state, claimed that the state's plan for funding public schools violated the "thorough and efficient" clause of the New Jersey Constitution (article VIII, section 4, paragraph 1).[15] The plaintiffs contended that the disparities in property wealth which still existed among New Jersey's school districts resulted in substantial disparities in per pupil expenditures among districts, thus depriving the plaintiffs of the thorough and efficient education guaranteed them by the state constitution. The defendants conceded the existence of disparities in the amount of money expended on public education among the state's school districts but contended that any educational inequities were not of financial origin and not attributable to the state's provisions for funding education. The issue decided by the Supreme Court of New Jersey in the present decision, however, was very narrow (i.e., to determine the appropriate tribunal to consider the evidence).

The defendants argued that the evidence should be considered first by an administrative tribunal because the subjects of the litiga-

15. Abbott v. Burke, 495 A.2d 376 (N.J. 1985); *see* The Yearbook of School Law 1985 at 234.

tion were particularly amenable to specialized consideration and clearly related to areas of administrative regulation. The plaintiffs argued that because a constitutional issue was involved, the case should be heard initially by the courts. The court concluded that the case should first be considered by the appropriate administrative agency and ordered that the case be transferred to the commissioner of education and heard by the Office of Administrative Law (OAL). Noting the constitutional aspects of the plaintiff's complaint, the court also directed the creation of an administrative record sufficient to guide adjudication of the constitutional issues in the event of appeal. The court noted that the OAL employed administrative law judges carefully chosen and trained to provide informed and impartial consideration of the matters before them.[16]

The Supreme Court of Connecticut considered an appeal from a trial court's ruling concerning the constitutionality of the state system of educational financing.[17] The case may be considered a sequel to *Horton I*[18] in which Connecticut's existing financing system for elementary and secondary education was held unconstitutional, and *Horton II*[19] in which the procedural parameters for review of the state's system of financing public schools were set forth. In the present case, plaintiffs challenged the constitutionality of the state system of educational financing originally enacted in 1979, and subsequently amended, claiming that it failed to provide the substantially equal educational opportunity required by the Connecticut Constitution. The trial court ruled that the guaranteed tax base plan enacted in 1979 and the categorical grants for transportation, special education, and school construction were constitutional, but that subsequent amendments which repeatedly postponed full implementation of the guaranteed tax base plan were unconstitutional.

The Supreme Court of Connecticut had ruled in *Horton I* that education in Connecticut was so basic a right that any infringement must be strictly scrutinized. The court compared educational financing plans to legislative apportionment plans and concluded that:

> like legislative apportionment plans, educational financing legislation must be strictly scrutinized using a three-step process. First, the plaintiffs must make a prima facie showing that disparities in educational expenditures are more

16. *Id.*
17. Horton v. Meskill, 486 A.2d 1099 (Conn. 1985).
18. Horton v. Meskill, 376 A.2d 359 (Conn. 1977); *see* The Yearbook of School Law 1978 at 283.
19. Horton v. Meskill, 445 A.2d 579 (Conn. 1982).

> than de minimis in that the disparities continue to jeopardize the plaintiffs' fundamental right to education. If they make that showing, the burden then shifts to the state to justify these disparities as incident to the advancement of a legitimate state policy. If the state's justification is acceptable, the state must further demonstrate that the continuing disparities are nevertheless not so great as to be unconstitutional. In other words, to satisfy the mandate of *Horton I*, a school financing plan must, as a whole, further the policy of providing significant equalizing state support to local education . . . . However, no such plan will be constitutional if the remaining level of the disparity continues to emasculate the goal of substantial equality.[20]

Applying this process, the court upheld the constitutionality of the educational financing scheme adopted in 1979 and the constitutionality of the state categorical grants for transportation, special education, and school construction. The court remanded for further proceedings the question of whether the amendments to the 1979 legislation were unconstitutional because the trial court had not applied the proper substantive standard in reaching its decision. The trial court had found the amendments unconstitutional because the defendants had failed to prove that they met a compelling state interest. However, the Connecticut Supreme Court stated that "the proper test requires the state to prove that the amendments reasonably advanced a rational state policy and that they did not result in an unconstitutionally large disparity."[21] The case was remanded to the trial court to determine whether the challenged amendments were unconstitutional and to frame appropriate orders for equitable relief.

A biennial appropriations act adopted by the Ohio General Assembly specifically allowed the governor to reduce state aid payments to local school districts. The governor later issued an executive order directing that state agencies reduce their expenditures to prevent the state's expenditures from exceeding its revenue receipts. As a result of the governor's executive order, substantial reductions were made in the funds distributed from the school foundation program to school districts in the state. A school district sought declaratory and injunctive relief charging that the reduction of state aid was arbitrary, capricious, and unlawful.[22] The trial court ruled that the governor's ex-

20. 486 A.2d at 1106.
21. *Id.* at 1110.
22. Board of Educ., Erie County School Dist. v. Rhodes, 477 N.E.2d 575 (Ohio Ct. App. 1984).

ecutive order was within his authority and the plaintiffs appealed. The court of appeals affirmed the lower court decision. It found that the appropriations act specifically allowed the governor to reduce state aid payments, that the governor's order had the affect of a legislative enactment, and that if the governor had intended to exclude appropriations for the school foundation program from his executive order such an exception would have been included.

A Washington case involved the validity of an action of the state Superintendent of Public Instruction in deducting the proceeds a school district realized from a timber sale from its allocation of state basic education funds.[23] The trial court ruled the deduction was invalid because the superintendent had not specifically identified funds from such a source as deductible in a rule promulgated under the state's Administrative Procedure Act (RCW 34.04). The superintendent had, in fact, promulgated such a rule, but this was done after the district was notified of the deduction. The appellate court reversed the trial court's decision, holding that although the new rule was adopted after the superintendent had made the deduction, it was adopted before the end of the school year. The court reasoned that there is no finality to an allocation until the close of the accounting period. It noted that the superintendent only estimates the amount of state funding available to each district and adjusts the estimates as data become available throughout the year. The court ruled that the school district knew the amount of state funds it would receive could be changed during the accounting period and that it was never misled as to the state superintendent's intentions. The court held that the superintendent's rule was valid and, although delayed, was sufficiently timely to support the deduction.

A case decided by the Supreme Court of New Hampshire involved the construction of statutes dealing with the disposition of revenue produced by sweepstakes.[24] The New Hampshire legislature had created a sweepstakes commission in 1963 and provided that all money remaining after paying the expense of administering the sweepstakes was to be paid out to school districts on a per pupil basis. In 1983, the governor proposed that all sweepstakes revenue be transferred to the State Department of Education and be used to help fund the state's program of financial aid to local school districts. The sweepstakes produced more revenue than had been estimated and the governor and commissioner of education proposed that the surplus revenue be

23. Ocosta School Dist. No. 172 v. Brouillet, 689 P.2d 1382 (Wash. Ct. App. 1984).

24. King v. Sununu, 490 A.2d 796 (N.H. 1985).

used to purchase computer equipment and services for local school districts. The plaintiff claimed that under the legislative scheme there was no surplus sweepstakes revenue; that any revenue beyond the amount estimated in the budget became part of the state's general fund and could not be expended without specific appropriation by the legislature. The trial court held for the governor and education commissioner and the plaintiff appealed. The Supreme Court of New Hampshire ruled that the legislation passed in 1983 served to suspend, not repeal, the previous statute, and that the defendants had confused the word "appropriation" with the term "revenue estimate." The legislature had not appropriated the amount of sweepstakes revenue estimated by the governor. Rather, it had appropriated a specific sum of money ($11,574,054) which included the "revenue estimate" of $4.7 million from the sweepstake. The state supreme court reversed the trial court's ruling, holding that any sweepstakes revenue not needed to fund the appropriation became part of the general fund and was subject to further appropriation as the legislature and governor might see fit.

The Commonwealth Court of Pennsylvania reversed its earlier decision with regard to whether a report prepared by the Office of the Auditor General represented an adjudication or merely a set of recommendations. In an earlier case,[25] the court had ruled that the auditor's report represented an adjudication and thus could properly be appealed. In the present case,[26] the court decided that under the provisions of the Public School Code of 1949 the auditor general had no statutory authority to approve or disapprove the payment of state subsidies to school districts; the auditor general merely made recommendations to the Pennsylvania Department of Education that state subsidies be withheld. The Pennsylvania School Code placed upon the secretary of the department of education a duty to withhold subsidies under certain conditions (e.g., if payments had been made to improperly certified teachers). The court concluded that it is the department of education, not the auditor general, which is given statutory authority for issuing a final order. Since the department had granted the school district a meeting with its audit review committee before taking any action on the audit findings, the court dismissed the appeal.

A similar conclusion was reached in a second Pennsylvania case in which an intermediate unit filed a petition for review of a report

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25. School Dist. of Lancaster v. Department of Educ., 458 A.2d 1024 (Pa. Commw. Ct. 1983); *see* The Yearbook of School Law 1984 at 223.

26. School Dist. of Lancaster v. Pennsylvania, 489 A.2d 963 (Pa. Commw. Ct. 1985).

issued by the auditor general.[27] The court found that the Pennsylvania School Code does not give the auditor general independent authority to affect the property rights of intermediate units; that the auditor general can only issue recommendations which are subject to final approval by the department of education.

Funds for Special Education

Illinois law required the parents of a developmentally disabled child placed in a private facility to pay up to $100 per month toward the cost of such placement. In a case decided by the Court of Appeals for the Seventh Circuit, the child and his parents initiated a class action alleging that the statute violated the Education for All Handicapped Children Act (P.L. 94-142), which requires that all handicapped persons between the ages of three and twenty-one be provided a "free appropriate public education."[28] The child originally had been placed in a private institution, the New Hope Living and Learning Center, and the state reimbursed the parents for all instructional and living expenses except for $100 per month. The parents appealed to the Illinois state courts and won a judgment requiring the state to pay the bills in full. In the meantime, the child had been moved to another private institution, Willow Glen Academy, and again the parents were required to pay $100 per month toward his living expenses. The parents again appealed and when the appeal was not decided within the time required by federal law, the parents turned to the federal courts. The district court permanently enjoined the state from requiring such payments and ordered it to reimburse members of the class for living expenses which the state had not paid since 1978, the date when the pertinent provisions of the Education for All Handicapped Children Act took effect. The state appealed both the permanent injunction and the order regarding retroactive reimbursement to parents.

The court of appeals stated that "what the [s]tate of Illinois has done is to carve out a class of handicapped children and deny them the full reimbursement that the Education for All Handicapped Children Act, as authoritatively construed in a regulation that the state does not challenge, entitles them to . . . . The state might as well have said, we choose to classify as developmentally disabled those children whose only need is for special education."[29] The court determined that

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27. Northeastern Educ. Intermediate Unit No. 19 v. Pennsylvania, 489 A.2d 966 (Pa. Commw. Ct. 1985).

28. Parks v. Pavkovic, 753 F.2d 1397 (7th Cir. 1985).

29. *Id.* at 1406.

the district judge had erred in ordering reimbursement to the parents beyond what was necessary to clear outstanding bills which if not paid would cause the handicapped children to be expelled from the institutions in which the state had placed them. Accordingly, the permanent injunction and the portion of the district court's order directing the state to pay the bills for living expenses of students were affirmed, but the portion of the order directing the state to reimburse parents for bills they had already paid was reversed.

A class action was brought in New York challenging the rate setting procedures established by the state for tuition reimbursement to private schools which provided services to handicapped children who could not be placed in public school programs.[30] It was claimed that the handicapped students were deprived of their due process and equal protection rights under the fourteenth amendment as well as their rights under the Education for All Handicapped Children Act and section 504 of the Rehabilitation Act of 1973. Article 89 of New York State Education Law authorizes local boards to enter into contracts with private institutions for the education of handicapped children, provided that the private institution and the specific contract have received prior approval of the commissioner of education. The commissioner is required to develop reimbursement procedures for approved private schools and these procedures must be approved by the state director of the budget. Once approved, the commissioner must apply the procedures to determine the annual tuition reimbursement rate for each private school. Prior to the 1983-84 school year, the state department of education had adopted a new reimbursement system under which an individual school's costs were subject to various "screens" reflecting statewide or regional averages. If a school's cost figures were above the allowable screen, they were disallowed pending an appeal or justification of the higher cost. The plaintiffs alleged that the revised methodologies were inconsistent with the mandates of P.L. 94-142 and infringed upon their due process and equal protection rights. Several problems in the new methodologies were alleged (e.g., that there was no clear, consistent written statement explaining the new system; that the procedure for calculating the various rates was secretive; and that there was no true appeal process).

The court could find in New York law no constitutional right for private schools to receive full tuition reimbursement. The court noted that reimbursement rates for each school were set at the beginning of

30. Andrew H. v. Ambach, 600 F. Supp. 1271 (N.D.N.Y. 1984).

the school year and that it was for each private school to choose, at that point, whether the reimbursement rate was acceptable. The court noted that even if a constitutionally protected interest did exist, it would not be compelling because the schools were, at worse, faced with a reduced tuition rate, not a complete termination of public support. The court stated, "more important, these plaintiffs are not the intended beneficiaries of the programs involved, but rather are merely providers of such services under the programs."[31] Concerning the new methodologies employed, the court stated, "the mere fact that no one document thoroughly analyzes or presents the new methodologies does not constitute a denial of due process . . . . Rather, due process is satisfied when an agency adopts an informal policy and applies such a policy in a relatively consistent manner."[32] Thus, the court denied the claims of the plaintiff schools. With regard to the claims of the plaintiff children, the court noted that no children actually had been displaced from private schools as a result of the new procedures for setting reimbursement rates. Thus, it ruled that the claims brought by the children were premature and granted the defendant's motion for summary judgment.

The Court of Appeals of Oregon decided a case in which parents claimed that a school district had failed to provide a free and appropriate public education for their handicapped child.[33] The Oregon Department of Education investigation determined that the district had violated state and federal laws and, therefore, awarded the parents partial reimbursement of the tuition cost they had incurred as a result of enrolling their son in a private school, but denied the parents' request for attorney fees. Both the district and the parents petitioned for review. The court determined that the department of education had proceeded properly in holding a "complaint hearing." It ruled, however, that while the department had statutory authority to withhold funds from the district, it was without authority to require the district to pay money directly to a parent. The court decided that while the record was adequate to determine that the boy's private placement was necessary, it was not adequate to determine whether the placement was appropriate. Therefore, the case was remanded to the department of education for further investigation. Concerning the parents' right to attorney fees, the court determined that if the parents' claim prevailed, the department had authority to award attorney fees under authority of the Rehabilitation Act of 1973.

31. *Id.* at 1282.
32. *Id.* at 1283.
33. Laughlin v. School Dist. No. 1, 686 P.2d 385 (Or. Ct. App. 1984).

A school district sought an injunction against the Alaska Department of Education alleging that the department lacked jurisdiction to conduct a hearing regarding whether the school district must repay some of the special education funds it had received.[34] The trial court ruled in favor of the department and the district appealed. The department had informed the school district of its determination that the district had been overpaid special education funds during the 1980-81 school year and would be required to return the excess amount it had received. The school district requested a hearing, but the hearing was not held until nine days after the end of the thirty-day period specified in the department's regulations. The district claimed that the department was guilty of laches because it had waited too long to request repayment and that the thirty-day deadline for conducting the hearing was mandatory. The Supreme Court of Alaska found no merit in the laches argument because the department had notified the school district in 1982 that its audit division had found an overpayment. The school district had not demonstrated that any prejudice resulted from the department's delay in seeking return of the overpayment of special education funds. The court also held that the regulation in question was directory, not mandatory, and that the department's slight delay in holding a hearing amounted to substantial compliance where there had been no substantial prejudice to the district's interest.

In New York, a handicapped child's mother sought to have the county pay the cost of her child's tuition and maintenance at summer camp.[35] The child's tuition and maintenance cost had been paid for the 1983 summer program because he was a handicapped child requiring special education services. When the mother sought an order directing the county to pay the child's tuition and maintenance cost for a 1984 summer camp program it refused, contending that reevaluation of the child's condition, of the need for the particular program chosen, and the suitability of the camp was required. The appellate court agreed with the county. It reversed the trial court's order because substantial issues of fact existed concerning possible changes in the child's condition and the suitability of the program or facility chosen for the summer program.

A California school district sought review of administrative decisions by the state superintendent ordering it to reimburse to the parents the cost of a private school placement for a handicapped child.[36]

34. Copper River School Dist. v. Alaska, 702 P.2d 625 (Alaska 1985)
35. Schwartz v. County of Nassau, 489 N.Y.S.2d 274 (N.Y. App. Div. 985).
36. LaPointe v. John K., 216 Cal. Rptr. 557 (Cal. Ct. App. 1985).

The trial court ruled against the parents and they appealed. The child had a history of handicapping conditions including a speech disability and a learning disability. His performance and behavior deteriorated badly during his eighth grade year and he became a ward of the juvenile court. His first individualized educational program (IEP) was prepared in November 1976 and a second IEP was prepared in June 1977. A third IEP prepared in September 1977 specified that the boy would remain in a regular program with assistance from a resource specialist. Despite the deterioration in his behavior during the 1977-78 school year, and the fact that he became a ward of the juvenile court when he started high school, the IEP was not changed. His problems continued, but the school district neither reassessed the child nor developed a new IEP. His parents finally placed him in a private school in Utah in March 1979. In April 1979, the parents met with school district personnel to develop an IEP which recognized the child's educational handicap, but the district agreed to pay only the "educational cost" of the child's placement in a private school. The school district claimed that because the child's parents had unilaterally placed him in a private residential school, they had violated the "stay put" provisions of the Education for All Handicapped Children Act and therefore were not entitled to reimbursement. The court agreed that the parents had violated the "stay put" requirements but noted that recent cases have evidenced greater flexibility in applying the "stay put" requirement. The court concluded that the right to reimbursement following unilateral placement depends upon whether the school district had fulfilled its obligation to provide an appropriate education for the child by proposing and implementing an appropriate IEP. The court found that the child's placement was entirely inappropriate and that the district had clearly violated the requirement that there be an annual review of the IEP. The court concluded that "on balance, . . . we find that appellants have demonstrated exceptional circumstances, including bad faith on the part of respondents, which justify the unilateral placement of John in a private residential facility."[37] Accordingly, the judgment was reversed and the case remanded to determine the amount of reimbursement and attorney fees to be awarded.

Federal Funds for Education

The United States Supreme Court decided a case in which the

37. Id. at 567.

state of Kentucky was alleged to have used federal funds to supplant state expenditures for educating disadvantaged children rather than supplementing the state's expenditures as required by title I of the Elementary and Secondary Act of 1965.[38] The Court of Appeals for the Sixth Circuit reversed the United States Secretary of Education's decision because it found no evidence of bad faith and because the state's programs complied with a reasonable interpretation of the law.[39] The Supreme Court, however, disagreed with the standard applied by the court of appeals and reversed the decision. The Court held that the demand for repayment of improperly used funds was an effort to collect upon a debt, not a penal sanction. Therefore, the relevant question was whether the secretary of education had properly determined that Kentucky failed to fulfill the assurances it had made. The Court also found that neither substantial compliance by the state nor the absence of bad faith on the part of the state absolved it from liability for repayment of the funds. The Court stated that the secretary of education was correct in deciding that Kentucky had violated the provisions against supplanting state funds with federal funds. The Court concluded that, "the programs approved by Kentucky for fiscal year 1974 clearly violated then-existing requirements for [t]itle I, and therefore neither ambiguity in the application of those requirements to other situations nor the policy debates that later arose within the Office of Education avail the [s]tate here."[40]

The state of New Jersey also sought review of a final decision by the secretary of education requiring the state to refund money it had received under the provisions of title I of the Elementary and Secondary Education Act of 1965.[41] The Supreme Court previously had held that the federal government may recover misused funds from the states.[42] The present decision dealt with whether substantive provisions of the 1978 amendments to the Elementary and Secondary Education Act should be applied retroactively in determining if title I funds were misused in earlier years. New Jersey argued that the 1978 amendments, which relaxed eligibility requirements for local schools, should be applied in determining whether funds were misused during the years 1970-72. The court of appeal's presumption that statutory amendments apply retroactively to pending cases was found to be in-

38. Bennett v. Kentucky Dep't of Educ., 105 S. Ct. 1544 (1985).

39. Kentucky, Dep't of Educ. v. Secretary of Educ., 717 F.2d 943 (6th Cir. 1983); *see* The Yearbook of School Law 1985 at 240.

40. Bennett v. Kentucky Dep't of Educ., 105 S. Ct. 1544 (1985).

41. 105 S. Ct. at 1555.

42. Bell v. New Jersey and Pa., 103 S. Ct. 2187 (1983); *see* The Yearbook of School Law 1984 at 225.

appropriate. The Supreme Court stated:

> Both the nature of the obligations that arise under the [t]itle I program and *Bradley* itself suggest that changes in substantive requirements for federal grants should not be presumed to operate retroactively. Moreover, practical considerations related to the administration of federal grant programs imply that obligations generally should be determined by reference to the law in effect when the grants were made.[43]

The Court could find nothing in the statutory language or the legislative history to indicate that Congress intended the standards established by the 1978 amendments to apply retroactively. The Court stated:

> The role of a court in reviewing a determination by the Secretary that funds have been misused is to judge whether the findings are supported by substantial evidence and reflect application of the proper legal standards . . . . Where the Secretary has properly concluded that funds were misused under the legal standards in effect when the grants were made, a reviewing court has no independent authority to excuse repayment based on its view of what would be the most equitable outcome.[44]

The decision of the court of appeals was reversed and the case remanded for further proceedings.

The application of a Massachusetts school district for federal funds for its vocational education program was denied by the Massachusetts Department of Education and it sought review of the department's decision.[45] The department had submitted a statewide plan, as required by title II of the Education Amendments of 1976, which was approved by the United States Department of Education. The approved plan provided that a school district would be ineligible to participate unless it reimbursed other institutions for out-of-district tuition fees for students enrolled in an approved vocational education program. The Rockland School Committee's application was denied because the town of Norwood had not been reimbursed for expenses it incurred in providing post-secondary vocational training to four students who were residents of the Rockland school district. The school committee contended that the provisions of the Massachusetts plan

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43. Bennett v. New Jersey, 105 S. Ct. 1555, 1559 (1985).
44. *Id.* 1563.
45. School Comm. v. Massachusetts Dep't of Educ., 753 F.2d 169 (1st Cir. 1985).

violated the federal act, and that it had not violated the state reimbursement law, or if it had, that the state education department was estopped from denying its application on that ground. The Court of Appeals for the First Circuit rejected the school committee's argument and affirmed the state education department's decision. The court held that the federal act did not prevent Massachusetts from incorporating a requirement of interlocality reimbursement into its state plan as a condition of eligibility; that it was not unreasonable for the department hearing officer to determine, based on the facts presented, that Massachusetts law was violated by the failure to reimburse the town of Norwood; and that the school committee shared responsibility for that failure.

A Michigan school district carried to the Court of Appeals for the Sixth Circuit its attempt to have declared unconstitutional the Michigan state aid laws which dealt with the treatment of federal impact aid.[46] The school district, a taxpayer of the district, and a student enrolled in the schools of the district appealed a federal district court decision granting summary judgment for the defendants.[47] They charged that the Michigan school aid law did not provide an "equalized formula" as contemplated by the federal impact aid law [20 U.S.C. section 240(d)(2)(A)], that the state's school aid program failed to comply with the requirements of the Michigan Constitution, and that the equal protection and due process guarantees of the federal and state constitutions were violated. The court of appeals generally agreed with the district court's disposition of the claims. However, it concluded that a federal court is barred by the eleventh amendment from considering claims against state defendants based on alleged violations of the state constitution. It directed the district court to remand the claims to the state court, but upheld the decision of the district court with regard to the other issues in the case.

A case dealing with federal impact aid also was decided by the Court of Appeals for the Ninth Circuit.[48] The impact aid law provides that for each child whose parents live or work on nontaxable federal property a local educational agency is entitled to receive an amount based on the amount spent from local revenues per child in "generally comparable" school districts [20 U.S.C. section 238(d)(3)(A)]. The secretary of education has promulgated regulations describing two methods which generally are used to make a determination of comparabil-

46. Gwinn Area Community Schools v. Michigan, 741 F.2d 847 (6th Cir. 1984).
47. Gwinn Area Community Schools v. Michigan, 574 F. Supp. 736 (W.D. Mich. 1983); *see* The Yearbook of School Law 1985 at 231.
48. Chula Vista City School Dist. v. Bell, 762 F.2d 762 (9th Cir. 1985).

ity. In California, a district selected approximately five other districts which it believed were generally comparable, subject to the secretary's disapproval. From the time the impact aid law was enacted in 1950, the secretary had employed a "$50 rule" under which if the average local contribution of the five selected districts is more than $50 greater than the local contribution in the subject district, they are not considered comparable. The regulations also require that the comparison districts be similar to the applicant district on at least five of fourteen criteria. In the present case, the department of eduction had decided on an experimental basis not to use the $50 rule to determine the amount to be granted local school districts. When the district's application for assistance was denied it challenged the decision and when the administrative law judge ruled against the district it appealed. The district court reversed, holding that the $50 rule was inconsistent with the legislative intent of the statute. The court of appeals reversed the district court's decision, however, holding that the legislative history of the impact aid law supported the $50 rule and that the secretary's temporary suspension of the rule did not violate the General Education Provisions Act (GEPA).

SCHOOL TAX ISSUES

Power to Tax

In a case decided in Louisiana, a school district was ordered by the trial court to accept taxes paid under protest by a public utility. The school district appealed and the appellate court affirmed the trial court's ruling.[49] The district had filed a "rule for taxes" and sought an order directing the public utility to pay the tax levied plus interest and penalties. The public utility did not deny the tax was owed but tried to tender under protest the full amount due. When the district refused to except the tender the public utility filed a motion to dismiss the rule for taxes claiming that under Louisiana law a taxpayer was entitled to pay under protest the amount alleged to be due and then within thirty days institute a suit to recover the payment. The court's decision turned on the question of whether a "rule" is a "suit" as contemplated by the statute in question. The court found that the tender of the amount due satisfied the rule and determined that the trial

49. St. Charles Parish School Bd. v. Louisiana Power and Light Co., 465 So. 2d 93 (La. Ct. App. 1985).

judge acted properly in dismissing the action. The court noted that tax statutes are to be interpreted liberally in favor of the taxpayer, and if a statute can reasonably be interpreted in more than one way, the interpretation most favorable to the taxpayer should be adopted.

A taxpayer in an Illinois case contended that school districts which had previously created working cash funds had no authority to issue bonds to replenish those funds, and that taxes levied to pay principal and interest on such bonds were invalid.[50] The case eventually reached the Supreme Court of Illinois which ruled that:

> The intent of the statute is to provide funds which may be available for transfer to the operating funds of the district, such as its educational, operations, building or maintenance funds, and repaid to the working cash fund upon collection of the anticipated taxes. To require that in order to have authority to issue bonds a school district must abolish its working cash fund, thus effecting a transfer of funds into its educational fund, is repugnant to the explicit statutory requirement that funds transferred from the working cash fund be repaid.[51]

The court ruled that the Illinois School Code explicitly authorized the issuance of bonds to increase working cash funds and upheld the validity of the taxes required to pay principal and interest on the bonds.

In an Ohio case, the value of a building for real estate tax purposes was at issue.[52] The Cleveland Board of Education had filed a complaint against the owners of the building seeking an increase in its assessed value. Based on evidence and testimony submitted at a hearing, the assessed valuation of the building was increased substantially and the owner appealed. The trial court permitted the parties to supplement the record established at the hearing but did not permit a trial *de novo*. Based on its review of the evidence, the trial court essentially upheld the valuation of the property. The Supreme Court of Ohio ruled that a trial *de novo* was not required. The court determined that the property owner's constitutional rights had been adequately protected and that the trial court correctly assessed the substantial body of evidence in calculating the fair market value of the property. It also ruled that the level of assessment was not discriminatory and that application of the assessment rate was in accordance with Ohio law.

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50. *In re* Walgenbach, 470 N.E.2d 1015 (Ill. 1984).
51. *Id.* at 1017.
52. Black v. Board of Revision of Cuyahoga County, 475 N.E.2d 1264 (Ohio 1985).

A taxpayer in New York sought to annul the assessor's rescission of its exemption from school taxes on real property improvements.[53] The court of appeals held that once a town assessor completes the assessment roll the assessor has no authority to rescind an exemption even if it was granted in error.

In Texas, a religious association sought a declaratory judgment to determine whether all or part of real property used as a youth ranch qualified for exemption from property taxes.[54] The trial court ruled that the property was not exempt from taxes and the association appealed. The appellate court affirmed but assessed one-half the court costs against the school district. The school district appealed and the Supreme Court of Texas ruled that the school district, as a taxing unit, was not liable for court costs in a suit to collect taxes.

The Supreme Court of Texas also ruled in a case in which a school district brought suit to recover delinquent school taxes.[55] The trial court ruled in favor of the school district, the appellate reversed, and the school district appealed. The Benavides Independent School District had originally included the city of Freer and had been authorized by its voters to issue bonds and levy a tax to retire the bonds. In 1976, Freer voted to assume control of the schools within its city limits and established a municipal independent school district. Later, the Freer Municipal Independent School District extended its boundaries by petition but only for school purposes. As a result of this extension of boundaries, the taxpayer's property became part of the Freer school district. The taxpayer claimed that the taxes in question were illegal because they had never been approved by a vote in the Freer school district, although it was undisputed that all taxpayers did have the opportunity to vote in the original tax election conducted by the Benavides school district. The Supreme Court of Texas ruled that the taxpayer was liable for the delinquent taxes, because when Freer took control of its schools by disannexation from the Benavides district and extended its boundaries for school purposes, it became responsible for a portion of the debt outstanding against the Benavides district and it derived the power to tax to retire those bonds. The court further noted that the Texas Constitution (article VII, section 3-B) specifically authorizes independent school districts to tax for school purposes in instances in which the district was formed wholly by disannexation

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53. Niagara Mohawk Power Corp. v. Town of Onondaga, 471 N.E.2d 138 (N.Y. 1984).

54. Leander Indep. School Dist. v. Texas Conference Ass'n of Seventh Day Adventists, 679 S.W.2d 487 (Tex. 1984).

55. Freer Mun. Indep. School Dist. v. Manges, 577 S.W.2d 488 (Tex. Civ. 1984).

from an existing independent school district that possessed the power to tax.

A school district also sought to recover delinquent taxes in another Texas case.[56] The trial court entered judgment in favor of a water control district and a school district which included taxes, penalties, interest, attorney fees, and an abstractor's bill. At issue in the appeal was the amount of attorney fees awarded and the reasonableness of the abstractor's charges. The appellate court reduced the award for attorney fees in accordance with the Texas statutes which govern their recovery and held that the abstractor's charges were reasonable.

Another Texas case involved the question of whether a husband and wife were entitled to a homestead exemption from school taxes on their residence.[57] The husband, who owned the property claimed as the homestead, was under the age of sixty-five during the 1982 tax year, but his wife was over the age of sixty-five. Their application for the homestead exemption was denied by the appraisal review board but the trial court ruled in favor of the couple. The court of appeals reversed, finding that the Texas tax code specifically restricts the homestead exemption to the owner of the property. The owner in this instance was the husband, who was not yet sixty-five years of age and thus did not qualify for the exemption during the 1982 tax year.

The Crockett Independent School District brought an action to recover allegedly delinquent property taxes owed by a landowner in the district.[58] The court noted that under the circumstances of this case, the taxpayer had the difficult burden of establishing that the value assessed on each parcel of property was grossly excessive. However, the court's review of the evidence led it to conclude that the trial court's findings concerning the market value of the property were contrary to the great weight and preponderance of evidence. The case was remanded for a new trial for determination of the reasonable cash market value of each piece of property for each taxable year so that a proper determination of the taxes, penalties, interests, and attorney fees could be made. The court of appeals ruled that the district was exempt from liability for any court costs at either the trial court level or the appeal level.

Several banks brought an action against a Texas school district charging that in determining the taxable value of the shares of bank

56. Lakeridge Dev. Corp. v. Travis County Water Control and Improvement Dist. No. 18, 677 S.W.2d 764 (Tex. Civ. App. 1984).

57. Ripley v. Stephens, 686 S.W.2d 757 (Tex. Civ. App. 1985).

58. Arnold v. Crockett Indep. School Dist., 688 S.W.2d 884 (Tex. Civ. App. 1985).

stock, federal government obligations were included as part of the banks' assets.[59] The assessor had determined the value of the shares of stock by using the "equity capital formula," the usual method used in Texas to arrive at the value of such property for tax purposes. However, this procedure included in the calculations obligations of the United States which are exempt from taxation. The plaintiffs appeared before the board of equalization and, although members of the board expressed sympathy for the situation, the values submitted by the assessor were not changed. The court was exceedingly critical of the burden placed on Texas taxpayers which makes it virtually impossible for them to complain successfully of errors or omissions from which they suffer. The court held that the trial court should have invalidated the illegal assessments imposed on the banks and commented:

> A tax "plan" which requires the taxation of exempt property is blatantly illegal. It is not only "fundamentally" wrong, it is indefensibly wrong. There is no reason for courts to protect such illegal action by penalizing the taxpayer and rewarding the wrongdoer by resort to judicially-invented doctrines designed to insure that government collects taxes illegally imposed.[60]

A corporation filed suit in Missouri to recover property taxes it had paid under protest because it claimed that the Missouri "rollback" provisions were violated.[61] The rollback provision (section 137.073, RS Mo. 1978) was adopted to prevent windfalls to taxing authorities which might occur because of increases in the assessed valuation of property. The Supreme Court of Missouri found that in this instance the increase in property taxes was caused by the district's increase in its estimate of need, not by an increase in its assessed valuation. Because the amount of tax revenue collected was virtually identical to the district's estimate of need, there was no need for a rollback because no windfall existed. Consequently, the corporation was not allowed to recover the taxes it had paid under protest.

A Pennsylvania township and a school district filed an equity action seeking to protect their interest in any additional property taxes which might arise as a result of an increase in the assessed value of a taxpayer's property.[62] The trial court dismissed the com-

59. Charles Schreiner Bank v. Kerrville Indep. School Dist., 683 S.W.2d 466 (Tex. Civ. App. 1984).

60. *Id.* at 473.

61. ASARCO, Inc. v. McHenry, 679 S.W.2d 866 (Mo. 1984).

62. Chartiers Valley School Dist. v. Virginia Mansions Apartments, Inc., 489 A.2d 1381 (Pa. Super. Ct. 1985).

plaint and the township and school district appealed. The appellate court affirmed because it determined that under Pennsylvania law, actions relating to the collection of taxes are statutory in nature, and that equitable relief is appropriate only where the statutory remedy is inadequate. The court found the appellants had attempted to resort to equity without first exhausting statutory remedies which, if followed in a timely way, would have adequately protected their interest.

In another Pennsylvania case, a school district brought action against a taxpayer in an attempt to collect unpaid occupation taxes.[63] The school district had enacted an occupation tax resolution in 1968 at a 100 mill rate. The district reduced the rate to seventy-five mills for the 1971-72 fiscal year and to sixty mills beginning with the 1978-79 fiscal year. These reductions were put into effect without specifically enacting a new occupation tax resolution as required by the statutes. The court ruled that the statute required the school district to enact a new occupation tax resolution whenever it reduced occupation taxes, that the school district did not substantially comply with the statute, and that the district's failure to comply rendered its attempted reductions of the occupational tax rate invalid. Consequently, the original occupation tax rate, 100 mills, continued in effect. The court ruled that the statute was mandatory so that the school district's failure to comply with its provisions rendered the attempted changes invalid. The court also noted that since a suit to compel payment of local taxes must be instituted within three years of the date the tax was originally due, the school district could not collect from other taxpayers the difference between the 100 mill rate actually in effect and the rate the district applied during the years 1971 through 1979. The taxpayer was ordered to pay the occupation tax for the eight years in question at the same rate which had been applied to other district taxpayers.

A case arising in Philadelphia involved the question of whether property was used for a "public purpose" and therefore exempt from taxation.[64] The Philadelphia School District had imposed a local use and occupancy tax on tennis courts constructed and operated on property owned by the city, leased by a municipal agency, and sublet to Pier 30 Associates. The court concluded that in the absence of evidence establishing that the lessee's use of the property was furthering the purpose of the governmental agency from which it was leased, it

63. Bradshaw v. Southern Fulton School Dist., 494 A.2d 76 (Pa. Commw. Ct. 1985).

64. Pier 30 Associates v. School Dist. of Philadelphia, 493 A.2d 126 (Pa. Commw. Ct. 1985).

must be concluded that the property was not serving a public purpose and was not tax exempt.

A New York case dealt with the question of whether school districts in Nassau County "levied" taxes and thus were entitled to opt out of tax exempt provisions.[65] A law enacted in New York in 1976 made available a declining ten-year tax exemption for real property used for business, commercial, or industrial activity. Certain taxing authorities also were authorized to opt out of the tax exemption provision. The primary issue presented in the case was whether school districts in Nassau County "levy" school taxes. Based upon its analysis of the legislative history of the act, as well as case law and administrative opinions dealing with it, the court concluded that school districts do levy taxes within the meaning of the statute and therefore were authorized to exercise the option of reducing the business investment exemption.

Relationship of School Districts to Other Government Units

A Massachusetts school committee brought action to compel a town accountant to charge all purchase orders delivered to her during fiscal year 1983 to its fiscal year 1983 budget.[66] The accountant had issued a memorandum stating that the school committee must submit to her by June 10, 1983 all purchase orders it proposed to have charged against its fiscal year 1983 budget. The school committee took the position that Massachusetts statutes gave it authority to determine expenditures within the total appropriation it had received. The accountant, however, insisted that unless the committee could demonstrate that purchases had been included in the fiscal year 1983 budget she would charge them to the fiscal 1984 budget. The court agreed with the school committee and ruled that if school funds appropriated for fiscal year 1983 were spent or encumbered in that fiscal year they were to be charged to the 1983 appropriation.

A city school district in Tennessee sought a declaration that the county owed the school district its prorata portion of payments in lieu of taxes received by the county from the Tennessee Valley Authority.[67] The county claimed that the school district was not entitled to share

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65. Walker v. Board of Assessors, 480 N.Y.S.2d 933 (N.Y. App. Div. 1984).

66. School Comm. of Wilmington v. Town Accountant of Wilmington, 433 N.E.2d 1146 (Mass. App. Ct. 1985).

67. Oak Ridge City Schools v. Anderson County, 677 S.W.2d 468 (Tenn. Ct. App. 1984).

in the payments in lieu of taxes because they were not received from the state, county, or other political subdivision as provided by state statutes. The appellate court agreed with the trial court, holding that the payments in lieu of taxes received from the Authority were not revenues received from the state, county, or other political subdivision. Therefore, the county could not be required to distribute a prorated share of the funds to the city school district.

In Missouri, one school district brought an action against another district to recover taxes on personal property located within its boundaries, but erroneously assessed, levied, and paid to the other district.[68] The trial court refused to permit recovery of the taxes erroneously paid to the second district and the first district appealed. The property in question, a dragline, was located within the Salisbury district at the time of assessment but the assessor erroneously reported that the dragline was located within the Westran district. At the time the error was discovered the taxes had been collected by the county but not yet disbursed and the Salisbury district tried to prevent their disbursement to the Westran district. The appellate court reviewed similar cases in Missouri and in other jurisdictions. It found that the Salisbury district had no direct claim to the tax revenues in question; that the only persons with a direct interest in the revenues were the taxpayers of the affected school district.[69] The court determined that under Missouri law, the Salisbury district must demonstrate, at the very least, that it had received less than its estimate of needs for the year and thus had sustained a deficit. The record, however, showed that the district had budgeted a shortage of $144,198, which was over $66,000 more than its actual shortage so that it suffered neither a shortage nor a deficit.

A case decided by the Court of Appeals of Kentucky involved an objection by the county board of education to sewer user charges imposed upon it by the county government.[70] The board of education claimed that the sewer user charge was a tax from which it should be exempt and pointed out that the service previously had been paid from revenue from property taxes. It also claimed that using public school funds to pay the sewer user charges would be using public school funds for other than public school purposes and thus would violate the Kentucky Constitution. The appellate court affirmed the

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68. Salisbury R-IV School Dist. v. Westran R-I School Dist., 686 S.W.2d 491 (Mo. Ct. App. 1984).

69. *Id.* 499.

70. Board of Educ. of Fayette County v. Lexington–Fayette Urban County Gov't, 691 S.W.2d 909 (Ky. Ct. App. 1985).

trial court's ruling that the board of education was subject to the sewer user charges, that such charges were not a tax, that the charges bore a reasonable relationship to the service provided, and that they were for the benefit of, and necessary for, the maintenance of the public schools.

The South Carolina Department of Social Services sought repayment of funds it had provided to a school district for meals served in a day-care service provided for school children in the district.[71] Following administrative review, it was determined that the school district had been overpaid and it was ordered to reimburse the department of social services. The trial court reversed and the department of social services appealed. The Supreme Court of South Carolina determined that the school district received funds from several sources to support the program, including funds supplied by the federal government pursuant to the Social Security Act, funds from the United States Department of Agriculture, fees for day-care services, funds collected from children, and funds from a regional council. One school in the district had shown a profit by receiving more money than it spent for the meals served. The court ruled that under the terms of its contract, and the pertinent federal regulations, the school district was obligated to repay the amount by which receipts in the school lunch program exceeded expenditures for the program.

A New York case dealt with the question of how tax money was to be allocated to school districts within the town of Brookhaven when one of the major taxpayers in the town defaulted.[72] The Long Island Lighting Company refused to pay its 1983-84 property tax bill on the Shoreham nuclear power generating station which was situated entirely within the Shoreham-Wading River School District. The supervisor of the town of Brookhaven distributed tax monies to the various school districts within the town in a ratio proportional to each district's individual tax levy. Two other school districts within the town challenged the distribution, claiming they should have received their full tax levy because the defaulting taxpayer was not located in their school district. The court reviewed the relevant statute and considered past practice in reaching its decision. The court ruled that under the Suffock County Tax Act, a shortage of real property tax revenues caused by default in payment of taxes must be fairly apportioned among all school districts. It noted that when a legislative enactment

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71. School Dist. No. 5 v. South Carolina Dep't of Social Servs., 320 S.E.2d 451 (S.C. 1984).

72. Shoreham–Wading River Cent. School Dist. v. Town of Brookhaven, 486 N.Y.S.2d 277 (N.Y. App. Div. 1985).

lends itself to more than one reasonable interpretation, the practical meaning attached to it by the parties affected, when acquiesced in over an extended period of time, is highly persuasive. Consequently, the court upheld the town's action in the distribution of the school tax money.

A case decided by the Supreme Court of Rhode Island involved several issues, one of which was the authority of a regional school district financial meeting to alter or evade valid contractual obligations by refusing to sign a bargaining agreement, and by refusing to adopt the budget recommended by the district school committee.[73] One effect of the refusal to adopt the budget was an order to the superintendent to reduce teachers' salaries to the scale which existed prior to pay increases granted teachers by an arbitrator. The reason for the order was that the amount of money appropriated was only sufficient to cover the reduced salary scale and other contractual obligations of the district. The teachers reacted by going on strike. A group of parents filed an appeal with the state commissioner of education and also filed an action in the superior court. The various actions were consolidated in the present case. The Supreme Court of Rhode Island noted that "although the questions presented vary in each case, one central issue pervades the entire controversy. . . . That issue is whether a municipality or a regional school-district financial meeting can alter or evade valid contractual obligations by refusing to incorporate those obligations into its budget."[74] The court concluded that the school committee had, by its actions, clearly accepted the arbitrator's award and therefore was estopped from challenging any aspect of the award. With regard to the relationship between a school committee and its appropriating authority, the court stated:

> If school committees are authorized by law to enter into binding agreements, which they are, then the community is bound to fund that agreement through its appropriating authority, whether that authority is the city or town council, a financial town meeting, or a district financial meeting. To conclude otherwise would completely negate the statutory power of the school committee to bargain and contract.
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> . . . Therefore, we hold that a city or town is bound by and must fund the valid collective-bargaining agreements en-

73. Exeter–West Greenwich Regional School Dist. v. Exeter–West Greenwich Teachers' Ass'n, 489 A.2d 1010 (R.I. 1985).

74. *Id.* at 1016.

tered into by its school committee as well as other obligations incurred in the providing of services mandated by law.[75]

Uses of School Revenue

The Supreme Court of Arizona decided a case in which taxpayers sought to have declared invalid a portion of a collective bargaining agreement between a school district and its teachers' association under which the association president was released from teaching duties but continued to be paid a portion of her salary.[76] The taxpayers claimed that this violated a constitutional provision prohibiting the gift of public money to a private association. In return for the portion of her salary paid by the district, the teachers' association president performed a number of activities for the benefit of the district. The district superintendent testified that the district saved between $5,800 and $15,800 compared to what it would have cost the district to hire a full-time director of employee relations. The court determined that the duties carried out by the association president and the relatively small salary she was paid by the district were not so disproportionate as to violate the constitutional prohibition. The facts presented by the district made a prima facie showing of proportionality and the plaintiffs did not refute them. The court pointed out that it was not up to the district to prove that its contract was reasonable; the burden of proof was on those who challenged the contract. The validity of the contract was upheld but the district's claim that it was entitled to attorney fees was denied. The court concluded that an award of attorney fees could have a chilling affect on other parties who might wish to question the legitimacy of the actions of public officials and thus would be contrary to public policy.

A group of Ohio taxpayers attempted to challenge certain alleged irregularities and unauthorized expenditures by a board of education.[77] They sent a letter to the city law director with a summary of the actions and expenditures which they believed to be irregular and unauthorized but the law director found no facts on which to base a civil action. The taxpayers then commenced a taxpayers' action which was dismissed by the trial court because they had failed to state a claim upon which relief could be granted. Upon appeal, however, the appel-

75. *Id.* at 1019.
76. Wistuber v. Paradise Valley Unified School Dist., 687 P.2d 354 (Ariz. 1984).
77. Popson v. Henn, 477 N.E.2d 465 (Ohio Ct. App. 1984).

late court disagreed, holding that the notice served upon the law director was sufficient and that it had stated a claim upon which relief could be granted if the allegations were proven to be true. The case was remanded for further proceedings.

In a Texas case, a school bookkeeper was convicted of the theft of student activity funds.[78] In her appeal, she claimed that the school district had given its consent to her appropriation of the funds. The appellate court rejected this argument. It ruled that the evidence was sufficient to prove that the school district could not have given its consent because it did not know that such an appropriation was occurring. The court also pointed out that the school district was a political subdivision of the state and that its officers were totally without power or authority to consent to any payment of school district funds which was not made in return for goods or services received by the school district, or to permit any appropriation of such funds for private purposes.

A New York case involved the question of whether a board of education was authorized to use school district funds to advocate support of the district's budget and a bond resolution.[79] A former school board member petitioned the commissioner of education to direct the school board to refrain from using district funds to pay for advertisements urging votes for or against any issue and to require that members of the board of education reimburse the district for the cost of such advertisements. The commissioner dismissed the petition and the petitioner turned to the courts in an attempt to have the commissioner's determination annulled. The trial court granted the annulment and ordered the board to cease and desist, whereupon the school board and the commissioner of education appealed. The appellate court reversed, holding that the power to make reasonable expenditures to communicate the board's position on budget matters is implicit in the broad grant of power given to school boards in New York. It also stated that school board members would be held personally liable for the expenditure of district funds only when their actions were collusive, fraudulent, or motivated by personal gain.

78. Mitchell v. State, 692 S.W.2d 909 (Tex. Civ. App. 1985).
79. Phillips v. Maurer, 486 N.Y.S.2d 804 (N.Y. App. Div. 1985).